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**Desert Cities Construction d/b/a Desert Cities Nurseries and Laborers' International Union of North America, Local 1184, AFL-CIO. Case 21-CA-35272**

March 31, 2004

**DECISION AND ORDER**

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer to the complaint. Upon a charge, first amended charge and second amended charge filed by Laborers' International Union of North America, Local 1184, AFL-CIO (the Union) on August 2, August 7, and October 15, 2002, respectively, the General Counsel issued the complaint on September 26, 2003, against Desert Cities Construction d/b/a Desert Cities Nurseries, the Respondent, alleging that it has violated Section 8(a)(1) of the Act. The Respondent filed an answer to the complaint. On January 22, 2004, however, the Respondent withdrew its answer.

On February 18, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On February 25, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed within 14 days from service of the complaint, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated December 29, 2004, notified the Respondent that unless an answer was received by January 6, 2004, a motion for default judgment would be filed. On December 30, 2003, the Respondent filed an answer to the complaint. However, by letter dated January 22, 2004, the Respondent withdrew its answer. The withdrawal of an answer has the same effect as a failure

to file an answer, i.e., the allegations in the complaint must be considered to be true.<sup>1</sup>

Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a California corporation, with its office and place of business located at 41555 Yucca Lane, Bermuda Dunes, California (the facility), has been engaged in the business of pool and spa construction.

During the 12-month period ending November 11, 2002, a representative period, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received at its Bermuda Dunes, California facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Laborers' International Union of North America, Local 1184, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Eddie Earl Cramlet	Vice-President
Lowell Allen Wooden	President

About May 8, 2002, the Respondent, by Eddie Earl Cramlet, at the facility, threatened to discharge employees and to replace them with subcontractors because they engaged in protected concerted activity.

About May 8, 2002, the following employees of the Respondent concertedly complained to the Respondent regarding their wages, by demanding that their wages be increased:

Santiago G. Acevedo	Jose Linares
Lucio B. Acevedo Cruz	Jorge A. Linares
Martin Acevedo	Alex Lopez
Vincente Aldama	Daniel Marmolejo
Marcario Almodovar	Rodolfo Marmolejo
Jose Enrique Alvarez	Normando Medina
Sergion Alvarez	Victor Mendez

<sup>1</sup> See *Maislin Transport*, 274 NLRB 529 (1985).

Jose E. Arevalo Mejia  
 Juan Ramon Argueta  
 Alfredo Blancarte  
 Jose Jesus Blancarte

Nasiyr K. Burris  
 Jose Cortez  
 Marcos Olvera Cortez  
 Alonzo Cuadros  
 Enrique Cuevas  
 Roberto Dominguez  
 Juan Carlos Espinoza  
 Isidoro Flores  
 Carlos Ramirez Juarez  
 Guadalupe Garcia Jr.  
 Jose Feliz Gomez Guillon  
 Eugenio Hernandez  
 Horacio Hernandez  
 Miguel A. Hernandez  
 Oscar Coca Hernandez  
 Rolando Ibarra  
 Jose Jimenez  
 Jose Segura  
 David E. Solorzano  
 Pedro Valdivia  
 Lazaro Vargas Molina  
 Benjamin Zamora

Eduardo Menjivar  
 Luis Montova  
 Juan C. Munoz  
 Juan Jesus Nieto  
 Martinez  
 Julio Cesar Noguez  
 Abraham Olvera  
 Marcelino Olvera  
 Juan Ortiz  
 Pablo Paloalto  
 Jorge Paz  
 Michael Penalver  
 Raul Rabago  
 Francisco Garcia  
 Jose Ramos  
 Carlos Alberto Rivas  
 Jose T. Rodriguez  
 Fidel Ruiz  
 Sergio Ruiz Cancio  
 Dolores Sanchez  
 Enrique Sanchez  
 Salvador Santoyo  
 Frank Solis  
 Rutilio Tinoco  
 Jose Soto Valenzuela  
 Randy Villareal  
 Cristobal Zarate

About May 8, 2002, the Respondent, by Eddie Earl Cramlet, discharged the 66 employees named above. The Respondent discharged the employees because the employees engaged in protected concerted activity, and to discourage employees from engaging in these activities.

In the alternative, since about May 8, 2002, certain employees of the Respondent employed at the facility including those named above, ceased work concertedly and engaged in a strike. The strike was caused by the Respondent's unfair labor practices set forth above.

About May 9, 2002, by the Union, the same 66 employees who had engaged in the strike described above, by letter and in person, made an unconditional offer to return to their former positions of employment. Since about May 9, 2002, the Respondent has failed and refused to reinstate the 66 employees to their former positions of employment.

About May 10, 2002, the Respondent, by Lowell Allen Wooden, while in a field near the facility, engaged in surveillance of employees' union and other protected concerted activity.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) of the Act by discharging the 66 employees named above, and by failing and refusing to reinstate these employees after they made an unconditional offer to return to work, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. Further, we shall order the Respondent to make each of these employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent shall also be required to remove from its files and records any and all references to the unlawful discharges and failure to reinstate the employees, and to notify the employees in writing that this has been done.

#### ORDER

The National Labor Relations Board orders that the Respondent, Desert Cities Construction d/b/a Desert Cities Nurseries, Bermuda Dunes, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to discharge employees or to replace them with a subcontractor because they engaged in protected concerted activities.

(b) Discharging employees because they engage in protected concerted activities and failing and refusing to reinstate unfair labor practice strikers who made unconditional offers to return to work.

(c) Engaging in surveillance of employees' union and other protected activity.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer the employees named below full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or any other rights or privileges previously enjoyed, dismissing if necessary, any replacements:

Santiago G. Acevedo	Jose Linares
Lucio B. Acevedo Cruz	Jorge A. Linares
Martin Acevedo	Alex Lopez
Vincente Aldama	Daniel Marmolejo
Marcario Almodovar	Rodolfo Marmolejo
Jose Enrique Alvarez	Normando Medina
Sergion Alvarez	Victor Mendez
Jose E. Arevalo Mejia	Eduardo Menjivar
Juan Ramon Argueta	Luis Montova
Alfredo Blancarte	Juan C. Munoz
Jose Jesus Blancarte	Juan Jesus Nieto
	Martinez
Nasiyr K. Burris	Julio Cesar Nogues
Jose Cortez	Abraham Olvera
Marcos Olvera Cortez	Marcelino Olvera
Alonzo Cuadros	Juan Ortiz
Enrique Cuevas	Pablo Paloalto
Roberto Dominguez	Jorge Paz
Juan Carlos Espinoza	Michael Penalver
Isidoro Flores	Raul Rabago
Carlos Ramirez Juarez	Francisco Garcia
Guadalupe Garcia Jr.	Jose Ramos
Jose Feliz Gomez Guillon	Carlos Alberto Rivas
Eugenio Hernandez	Jose T. Rodriguez
Horacio Hernandez	Fidel Ruiz
Miguel A. Hernandez	Sergio Ruiz Cancio
Oscar Coca Hernandez	Dolores Sanchez
Rolando Ibarra	Enrique Sanchez
Jose Jimenez	Salvador Santoyo
Jose Segura	Frank Solis
David E. Solorzano	Rutilio Tinoco
Pedro Valdivia	Jose Soto Valenzuela
Lazaro Vargas Molina	Randy Villareal
Benjamin Zamora	Cristobal Zarate

(b) Make whole the employees named above for any loss of wages and other benefits they may have suffered as a result of the unlawful discharges and failure to reinstate them, with interest, as set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its records and files any references to the unlawful discharges and failure to reinstate the employees listed

above, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges and failure to reinstate will not be used against them in any way.

(d) Preserve, and within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records, if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Bermuda Dunes, California, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be translated into Spanish, and both Spanish and English notices shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 8, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 31, 2004

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Peter C. Schaumber,	Member
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Dennis P. Walsh,	Member
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<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT threaten to discharge our employees or to replace them with a subcontractor because of their protected concerted activities.

WE WILL NOT discharge employees because they engage in protected concerted activities and WE WILL NOT fail and refuse to reinstate unfair labor practice strikers who have made unconditional offers to return to work.

WE WILL NOT engage in surveillance of our employees' union and other protected activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer the following employees full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed:

Santiago G. Acevedo	Jose Linares
Lucio B. Acevedo Cruz	Jorge A. Linares
Martin Acevedo	Alex Lopez
Vincente Aldama	Daniel Marmolejo
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Carlos Ramirez Juarez  
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Oscar Coca Hernandez  
Rolando Ibarra  
Jose Jimenez  
Jose Segura  
David E. Solorzano  
Pedro Valdivia  
Lazaro Vargas Molina  
Benjamin Zamora

Juan C. Munoz  
Juan Jesus Nieto  
Martinez  
Julio Cesar Nogues  
Abraham Olvera  
Marcelino Olvera  
Juan Ortiz  
Pablo Paloalto  
Jorge Paz  
Michael Penalver  
Raul Rabago  
Francisco Garcia  
Jose Ramos  
Carlos Alberto Rivas  
Jose T. Rodriguez  
Fidel Ruiz  
Sergio Ruiz Cancio  
Dolores Sanchez  
Enrique Sanchez  
Salvador Santoyo  
Frank Solis  
Rutilio Tinoco  
Jose Soto Valenzuela  
Randy Villareal  
Cristobal Zarate

WE WILL make these employees whole, with interest, for any loss of earnings and other benefits suffered as a result of our unlawful action against them.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful discharges and failure to reinstate these employees, and, WE WILL within 3 days thereafter, notify them in writing that this has been done, and that the unlawful conduct will not be used against them in any way.

DESERT CITIES CONSTRUCTION D/B/A DESERT  
CITIES NURSERIES